

# Memorandum



Date: March 21, 2006

To: Honorable Chairman Joe A. Martinez and Members,  
Board of County Commissioners

Agenda Item No. 14(A)(8)

From: George M. Burgess  
County Manager

A handwritten signature in black ink, appearing to read "G. Burgess", written over the printed name of George M. Burgess.

Subject: Change Order 85 to Amended Agreement with Performing Arts Center Builders  
(PACB)

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## **RECOMMENDATION**

It is recommended that the attached Change Order 85 to the Agency Construction Management contract between Performing Arts Center Builders (PACB) and Miami-Dade County (Owner) be approved to increase the current contract amount by \$38.3 million to pay for acceleration and recovery efforts in order to meet the August 4, 2006 completion date. Furthermore, it is recommended that Resolution R-377-04 providing for a reconsideration period be waived.

## **BACKGROUND**

On September 25, 2001, by Resolution Number R-1073-01, the Board approved the terms of the Construction Management Agreement between Miami-Dade County and Performing Arts Center Builders (PACB), a joint venture, with a Guaranteed Maximum Price (GMP) of \$254,650,000 for the construction of the Performing Arts Center (PAC). PACB is a consortium of three firms, Odebrecht Construction, Inc., The Haskell Company and Ellis Don Construction, Inc.

On July 27, 2004, the Board passed R-1021-04 which infused \$67.7 million for the Performing Arts Center's Restructuring Plan. This plan included amendments for the design team, the addition of a Program Manager, and a restructured construction contract from an At-Risk Construction Manager to an Agency Construction Manager. As the Board will recall, this restructuring primarily occurred due to ongoing disputes over responsibility for costs related to changes in the work and project delays between PACB, the project architect and the County which caused significant impacts to the progression of the work.

At that time, the project also suffered from a lack of open and timely communication between all the team members which resulted in wasted resources and diminished the overall objective of successfully completing the project. The Restructuring Plan resolved asserted time and scope change claims (prior to June 30, 2004) presented by PACB and its subcontractors, along with securing a new and achievable completion date of August 4, 2006. The Board will also remember our private sector partner, the Performing Arts Center Foundation (Foundation), committed to raise an additional \$5 million for the project to be applied to the Change Authorization fund or reserve account which is not included in the \$67.7 million. This \$5 million is memorialized in Amendment Number 5 of the Performing Arts Center Trust (Trust) Operating Agreement.

Since the Restructuring Plan was approved by the Board on July 27, 2004, significant progress has been made. The project is 95% complete with six months remaining before the first performance. However, due to several unforeseen events, the project's schedule sustained significant slippage in the last half of 2005 to place the completion date of August 4, 2006 in jeopardy if aggressive action had not been taken.

On September 20, 2005, I presented to the Board a detailed report that summarized the progress made on the Performing Arts Center (PAC) as well as outlining some of the reasons the project's schedule sustained significant slippage. The report outlined that the project had suffered from a shortage of labor due to the boom in the South Florida construction market which hindered the project's ability to get sufficient labor to successfully produce the amount of in-place construction to allow for an August 2006 completion. The weather activity that South Florida has faced in the past two years forced the project to prepare for an unusual number of hurricanes, as well as other significant weather-related events. These were major disturbances and did not allow certain trades to meet critical completion dates which caused subsequent activities to be delayed.

Several internal challenges also compounded the labor situation and weather impacts: modifications due to local building codes and ADA requirements, increased insurance premiums, correction of non-conforming work, user upgrades (i.e. wood floors, kitchen equipment, building space conversions, etc.), reimplementation of required scope previously deleted (i.e. telecommunications and security systems) and corrections necessary to overcome value engineering decisions made at the start of the project.

When it was determined the Acceleration/Recovery Plan would cost approximately \$42.7 million, PACB, the County, and the private sector (the Trust and Foundation) looked at ways to reduce the costs without adversely impacting the work. PACB provided a \$3.4 million deduct change authorization which assisted in the initial phase of the Acceleration/Recovery plan and the Foundation's commitment for an additional \$5.0 million reduced the funding need to \$34.3 million. In my report I presented the Acceleration/Recovery Plan at a cost of \$34.3 million (including \$1 million for claims services provided by our Program Manager).

#### **DETAIL OF CHANGE ORDER 85**

Change Order 85 increases PACB's contract by \$33.3 million plus \$5 million funded by the Foundation (as committed during the July 2004 Restructuring Plan) for a total of \$38.3 million. It is important to note that this is a Dedicated Owner's Allowance Account within PACB's Change Order, and will be tracked as separate Schedule of Value Line Items and that PACB shall maintain complete and detailed accounting records of these separate accounts. This Change Order is a not-to-exceed amount and any remaining funds will be returned to the Owner through a Deductive Change Order. PACB must obtain written approval from the Owner through an executed Change Authorization signed by the Owner identifying the appropriate project funds listed below. If additional monies are required in excess of the project funds, a Change Order will be presented to the Board identifying the additional funding source.

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The following is a list of the allowable uses for the Dedicated Owner's Allowance Account:

1. Acceleration Efforts – est. \$7.0 million
2. Additional Payroll Costs and General Conditions – est. \$7.4 million
3. Non-Recoverable Backcharges – est. \$1.5 million
4. Securing yet to be Purchased Contracts – est. \$1.4 million
5. Replenish the Owner's Change Authorization fund – est. \$11.0 million
6. Owner's Reserve to settle subcontractor requests for additional compensation – est. \$10.0 million

The above amounts are estimated and the County may authorize the shifting of funds to suit the requirements of the project but in no event exceed \$38.3 million. Please refer to the following pages for a more detailed description of the allowable uses.

### **PRIVATE SECTOR and OTHER SUPPORT FOR THE RECOVERY PLAN**

My September 20, 2005, report to the Board outlined the funding sources for the PAC Recovery Plan of \$34.3 million (\$33.3 million dedicated to construction and \$1.0 million for claims services provided by our Program Manager). Over the past several months, I have been in further discussions with our private sector partners (the Trust and Foundation) and the City of Miami regarding opportunities for the Omni CRA to provide additional financial support to complete the Center's construction and assist with the long-term operation of the Center. As the Board may be aware these discussions have not resulted in an agreement at this time. The additional financial support from the private sector will service a \$34.3 million loan to be issued by the County. The pledge for this loan is a budget to appropriate from a non-ad valorem tax pledge or any other appropriate funding source, such as convention development tax dollars, to be paid back over a 20-year period.

#### **Private Sector Partners – the Trust and the Foundation**

The Trust has agreed to annually fund \$1.5 million per year beginning October 1, 2007 and continuing for twenty (20) years for a total of \$30.0 million. The Trust may elect to pay these annual payments from the \$16 million operating endowment fund. This obligation is described in further detail in Amendment Number 5 to the Trust's and County's Operating Agreement which is on today's agenda for Board approval.

### **RETROACTIVE APPROVAL OF ACCELERATION/RECOVERY COSTS**

When I reported to the Board in September, I was in the process of finalizing the terms and conditions of the additional private sector contribution and the amendment to the above interlocal agreement with the City of Miami and the CRA. My staff since has met with the Trust to memorialize Amendment Number 5 to the Operating Management Agreement between the County and the Trust and as stated above discussions with the City of Miami regarding the Omni CRA have not resulted in an agreement. I advised the Board on September 20, 2005 that it was vital to move forward with the above in order not to have any additional slippage occur and provide the best opportunity to meet the completion date of August 4, 2006. As such I have authorized expenditure of funds in anticipation of Board approval of Change Order 85. This was an exceptional occurrence, strictly associated with the need to accelerate the construction schedule to meet the completion date of August 4, 2006.

**CHANGE ORDER NO:** 85

**PROJECT NAME:** Performing Arts Center

**PROJECT NO:** PAC

**CONTRACT NO:** 9501

**PROJECT DESCRIPTION:** Contract for the construction of the Miami Performing Arts Center

**PROJECT LOCATION:** 1300 Biscayne Boulevard (Ballet/Opera House) 1330 North Bayshore Drive (Concert Hall)

**APPROVAL PATH:** BCC

**USER DEPARTMENT:** Performing Arts Center Management

**MANAGING DEPARTMENT:** Performing Arts Center Management

**PTP FUNDING:** No

**GOB FUNDING:** No

**CHANGE ORDER DESCRIPTION:** This Change Order will create a Dedicated Owner's Allowance Account which will be used for the following purposes:

**1. Acceleration Efforts** – Est. \$7.0 million for Acceleration Efforts to pay for subcontractor premium time and/or additional field resources (est. \$4.0 million); and to pay for Core field staff (est. \$3.0 million). This is an effort undertaken by the Construction Manager and the project team to achieve the August 4, 2006 Occupancy Date. The payment for these costs will be the actual cost of labor in accordance with PACB's contract.

**2. Additional Payroll Costs and General Conditions** – Est. \$7.4 million to pay for additional personnel and extended personnel durations prior to August 4, 2006 (est. \$4.0 million) and not budgeted General Conditions (est. \$3.4 million) requested and approved by the County. The payment for these costs will be the actual cost of material and labor in accordance with PACB's contract.

**3. Non-Recoverable Backcharges** – Est. \$1.5 million to pay for the correction of deficient work or work performed by others due to failure to perform the Work in the scope of a subcontract agreement. The reality of combining an extraordinary number of dissimilar materials, installed by different trades at different times, will invariably lead to mistakes. Unfortunately, when work is done in an incorrect or untimely manner, other contractors are required to either correct the deficient work or modify their work to conform to the prior work left in place. The estimated \$1.5 million reflects a cost that the project is projecting as unrecoverable back-charges that the County has to pay and will not be able to recoup without costly litigation.

**4. Securing yet to be Purchased Contracts** – Est. \$1.4 million to pay for defined scope necessary to complete the Work that has not been purchased prior to the execution of Change Order 73 – Restructuring Change Order. At the time of restructuring, it was anticipated that there would be Contingency available to purchase these contracts but, for reasons discussed above and in my September's report, the Contingency was exhausted.

**5. Replenish the OWNER's Change Authorization fund** – Est. \$11.0 million to pay to the number of issues that continue to occur, and based upon the cost data projected combined with the difficulty of the work remaining, it is prudent to replenish this contingency for unanticipated and unforeseen costs, code issues, and other costs related to the Cost of the Work. This fund includes the Foundation's \$5.0 million plus \$6.0 million which is part of the Acceleration/Recovery Plan.

**6. OWNER's Reserve to settle subcontractor requests for additional compensation** – Est. \$10.0 million to pay for subcontractor's request for additional compensation for loss productivity, out-of-sequence work, extended general conditions, etc. All such requests are initially reviewed by PACB for recommendation and a separate analysis of these requests is undertaken by the County's Program Manager for merit and quantum. The County Manager's Office, the Director of Construction, and the Program Manager Team then enter into settlement negotiations and once a resolution is achieved a Change Authorization is executed. Settlement releases must be signed prior to executing a Change Authorization; these releases protect the County against future claims for settled issues. In the event that requests for additional compensation cannot be resolved, these funds shall be available for the resolution of claims. If litigation ensues for the remainder of the claim, I will ask the County Attorney's Office to defend staff's and claims consultant's conclusions. If this reserve funds becomes insufficient to pay the amounts necessary to fund (i.) valid claims, (ii.) settlement amounts, and (iii.) litigation costs, in connection with disputed claims, appropriate funding will be identified and recommended for Board approval.

**MONETARY  
JUSTIFICATION:**

This is a Change Order for \$38.3 which will provide funding towards the Miami Performing Arts Center's Acceleration/Recovery Plan. **The additional financial support will be funded by a \$34.3 million loan to be issued by the County.** The pledge for this loan is a budget to appropriate from a non-ad valorem tax pledge or any other appropriate funding source, such as convention development tax dollars, to be paid back over a 20-year period.

**TIME JUSTIFICATION:** No time is authorized for this Change Order

  
Assistant County Manager

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# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Joe A. Martinez  
and Members, Board of County Commissioners

**DATE:** March 21, 2006

**FROM:** Murray A. Greenberg  
County Attorney

**SUBJECT:** Agenda Item No. 14(A)(8)

Please note any items checked.

- ☒ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 14(A)(8)

Veto \_\_\_\_\_

03-21-06

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION RELATING TO PERFORMING ARTS CENTER, APPROVING CHANGE ORDER NO. 85 TO THE AGENCY CONSTRUCTION MANAGEMENT CONTRACT BETWEEN PERFORMING ARTS CENTER BUILDERS AND MIAMI-DADE COUNTY, TO INCREASE THE CURRENT CONTRACT AMOUNT BY \$38.3 MILLION; RETROACTIVELY APPROVING ACCELERATION AND RECOVERY EFFORTS IN ORDER TO MEET COMPLETION DATE; AUTHORIZING COUNTY MANAGER OR DESIGNEE TO EXECUTE THE CHANGE ORDER; WAIVING REQUIREMENTS OF RESOLUTION NO. R-377-04**

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby approves Change Order No. 85 to the Agency Construction Management Contract between Performing Arts Center Builders (PACB) and Miami-Dade County, which Change Order increases the current contract amount by \$38.3 Million; retroactively approves acceleration and recovery efforts in order to meet completion date, in substantially the form attached hereto and made a part hereof; authorizes the County Manager or his designee to execute same for and on behalf of Miami-Dade County and to exercise the provisions contained therein; and hereby waives the requirements of Resolution No. R-377-04.

The foregoing resolution was offered by Commissioner \_\_\_\_\_, who  
moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Dennis C. Moss, Vice-Chairman	
Bruno A. Barreiro	Jose "Pepe" Diaz
Audrey M. Edmonson	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 21<sup>st</sup> day  
of March, 2006. This resolution shall become effective ten (10) days after the date of its  
adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an  
override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

RAP

Rafael A. Paz



DOCUMENT 01028-CO  
CHANGE ORDER TO ORIGINAL CONTRACT

TYPE OF C.O.: CO

CHANGE ORDER NO. 85 PROJECT NO. 9501  
PROJECT TITLE: PERFORMING ARTS CENTER OF GREATER MIAMI  
TO CONSTRUCTION MANAGER: PERFORMING ARTS CENTER BUILDERS (PACB)

DATE: 1/17/2006

**YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES TO THE CONTRACT AS DESCRIBED ON THE DOCUMENT(S) ATTACHED HERETO AND TO COMPLETE THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.**

Except with respect to rights, claims demands, costs, damages, and liabilities reserved in the separate writing submitted in connection with this Change Order, the Construction Manager waives and releases the Owner of liability for any and all known claims against the Owner and its officers and employees for any direct costs, damages and liabilities resulting from this change to the Work or additional work performed by the Construction Manager up to and including the date of this Change Order.

**SUMMARY OF CONTRACT SUM**

<b>ORIGINAL CONTRACT SUM</b>	<b>\$254,650,000.00</b>
Net Change by previously authorized Change Order	14,546,754.72
Contract Sum prior to this Change Order	\$269,196,754.72
Amount of this Change Order (Not to Exceed)	\$38,300,000.00
<b>ADJUSTED CONTRACT SUM(including this Change Order)</b>	<b>\$307,496,754.72</b>

Percent Increase/Decrease this Change Order 14.23%  
Total Percent Increase/Decrease to date 20.75%

**AUTHORIZED EXTENSION ALLOWED** 0 Calendar days

**CERTIFYING STATEMENT:** I hereby certify that this Change Order and the attached supporting documentation is accurate and consistent with fair and reasonable Cost of Changes established by (unit prices, lump sum, or cost plus) method as stipulated in the Contract. Furthermore, the Authorized Extension being granted is reasonable, accurate and in keeping with the actual progress of the Work.

  
SIGNATURE CONSULTING ARCHITECT OR ENGINEER  
(Cesar Palli & Assoc)

P.J. VOULENEC  
SR. PROJ. MGR. 2-6-06  
(Please print name and title) Date

**TO BE FILLED OUT BY DEPARTMENT INITIATING CHANGE ORDER**

PAC Management Office  
DEPARTMENT

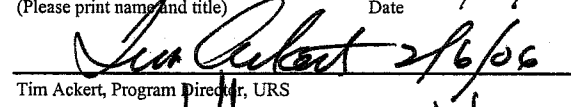
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FUNDS BUDGETED CODE

ACCEPTED BY:

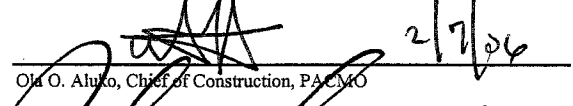
  
Performing Arts Center Builders, Construction Manager

JESUS R. VALQUEZ 2/6/06  
(Please print name and title) Date

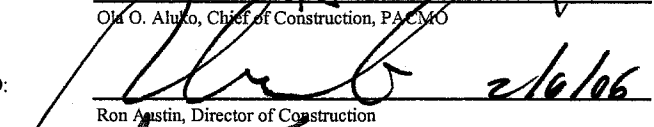
RECOMMENDED:

  
Tim Ackert, Program Director, URS

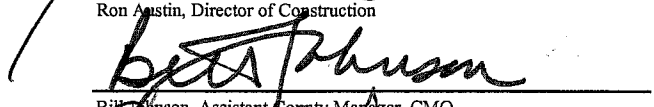
RECOMMENDED:

  
O. O. Aluko, Chief of Construction, PACMO

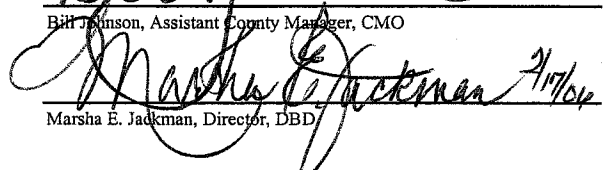
RECOMMENDED:

  
Ron Austin, Director of Construction

APPROVED:

  
Bill Johnson, Assistant County Manager, CMO

APPROVED:

  
Marsha E. Jackman, Director, DBD

APPROVED:

Jennifer Glazer-Moon, Director, OSBM

Terea Hebert  
RECOMMENDED: Terea Hebert - Director of PAC Admin.

SURETY:

Ana W. Oliveras  
American Home Assurance Company (Company Seal)

Ana W Oliveras, Attorney-in-Fact  
(Please print name) Date 2/1/2006

APPROVED FOR LEGAL SUFFICIENCY:  
COUNTY'S ATTORNEY'S OFFICE

DBM  
2-10-06

Miami-Dade County, Florida  
BOARD OF COUNTY COMMISSIONERS

By:

George M. Burgess, County Manager

ATTEST:

By:

Deputy Clerk

**DOCUMENT 01028-CO  
CHANGE ORDER TO ORIGINAL CONTRACT**

TYPE OF C.O.: **85**

**CHANGE ORDER NO.** 85 **PROJECT NO.** 9501  
**PROJECT TITLE:** PERFORMING ARTS CENTER OF GREATER MIAMI  
**TO CONSTRUCTION MANAGER:** PERFORMING ARTS CENTER BUILDERS (PACB)

<b>Reason for Change:</b>			
Value Engineering <input type="checkbox"/>	Unforeseen Condition <input type="checkbox"/>	Direct Purchase Program <input type="checkbox"/>	
Document Discrepancy <input type="checkbox"/>	Owner Change <input checked="" type="checkbox"/>	Owner's Controlled Insurance Program <input type="checkbox"/>	

Item No.	Change Order Request No.	Description	Amount (Estimated)
1	N/A	Subcontractor Acceleration	\$4,000,000.00
2	N/A	Core Field Staff	\$3,000,000.00
3	N/A	Additional Payroll Costs	\$4,000,000.00
4	N/A	Additional General Conditions	\$3,400,000.00
5	N/A	Non-Recoverable Backcharges	\$1,500,000.00
6	N/A	Securing Yet to be Purchased Contracts	\$1,400,000.00
7	N/A	Owner's Change Authorizations	\$11,000,000.00
8	N/A	Claims Reserve	\$10,000,000.00
		<b>TOTAL (NOT TO EXCEED) DEDICATED OWNER'S ALLOWANCE ACCOUNT</b>	<b>\$38,300,000.00</b>

The purpose of this Change Order is to create a Dedicated Owner's Allowance Account in the amount of \$38.3 million for the following purpose which includes the replenishment of the Construction Contingency in the amount of \$11.0 million.

Miami-Dade County ("Owner") and Performing Arts Center Builders, a Joint Venture ("Construction Manager"), hereby enter into this Change Order and agree as follows:

The Construction Manager agrees to this Change Order Adjustment which increases the Contract Sum by an amount of \$ 38,300,000.00. This amount is a Dedicated Owner's Allowance Account which will be tracked as separate Schedule of Value Line Items and the Construction Manager shall maintain complete and detailed accounting records of these separate accounts. This Change Order is a not-to-exceed amount and any remaining funds will be returned to the Owner through a Deductive Change Order. The Construction Manager must obtain written approval from the Owner through an executed Change Authorization signed by the Owner identifying the appropriate Project funds listed below. If additional monies are required in excess of the Project funds; a Change Order will be presented to the Board identifying the additional funding source. The amounts below are estimated and the County may authorize the shifting of funds to suit the requirements of the Project but in no event exceed \$38.3 million. In the below categories forward spending has taken place in anticipation of Board's approval of this Change Order.

Allowable uses for this Change Order:

1. Acceleration Efforts – Est. \$7.0 million for Acceleration Efforts to pay for subcontractor premium time and/or additional field resources (est. \$4.0 million); and to pay for Core field staff (est. \$3.0 million). This is an effort undertaken by the Construction Manager and the Project Team to achieve the August 4, 2006 Occupancy Date. The payment for these costs will be the actual cost of labor in accordance with PACB's contract.
2. Additional Payroll Costs and General Conditions – Est. \$7.4 million to pay for additional personnel and extended personnel durations prior to August 4, 2006 (est. \$4.0 million) and not budgeted General Conditions (est. \$3.4 million) requested and approved by the County. The payment for these costs will be the actual cost of material and labor in accordance with PACB's contract.
3. Non-Recoverable Backcharges – Est. \$1.5 million to pay for the correction of deficient work or work performed by others due to failure to perform the Work in the scope of a subcontract agreement. The reality of combining an extraordinary number of dissimilar materials, installed by different trades at different times, will invariably lead to mistakes. At the discretion of the Owner, the Project is reserving the est. \$1.5 million for unrecoverable backcharges which the Owner may deem to costly to pursue through litigation.
4. Securing yet to be Purchased Contracts – Est. \$1.4 million to pay for defined scope necessary to complete the Work that has not been purchased prior to the execution of Change Order 73 – Restructuring Change Order.
5. Replenish the OWNER's Change Authorization fund – Est. \$11.0 million to pay for unanticipated and unforeseen costs, code issues, and other costs related to the Cost of the Work.

DOCUMENT 01028-CO  
CHANGE ORDER TO ORIGINAL CONTRACT

TYPE OF C.O.: CO

CHANGE ORDER NO. 85 PROJECT NO. 9501  
PROJECT TITLE: PERFORMING ARTS CENTER OF GREATER MIAMI  
TO CONSTRUCTION MANAGER: PERFORMING ARTS CENTER BUILDERS (PACB)

6. OWNER's Reserve to settle subcontractor requests for additional compensation – Est. \$10.0 million to pay for subcontractor's request for additional compensation for loss productivity, out-of-sequence work, extended general conditions, etc. All such requests will be initially reviewed by PACB for recommendation and a separate analysis of these requests will be undertaken by the County's Program Manager for merit and quantum. The County Manager's Office, the Director of Construction, and the Program Manager Team will enter into settlement negotiations and once a resolution is achieved a Change Authorization shall be executed. Settlement releases will be signed prior to executing a Change Authorization; these releases protect the County against future claims for settled issues. In the event that these requests for additional compensation cannot be resolved, these funds shall be available for the resolution of claims. ~~If litigation ensues for the remainder of the claim, I will ask the County Attorney's Office to defend staff's and claims consultant's conclusions.~~ If litigation ensues for the remainder of the claim, I will ask the County Attorney's Office to defend staff's and claims consultant's conclusions. If this reserve funds becomes insufficient to pay the amounts necessary to fund (i.) valid claims, (ii.) settlement amounts, and (iii.) litigation costs, in connection with disputed claims, appropriate funding will be identified and recommended for Board approval. MT

RELEASE OF CLAIM

The fact in and of itself that this Change Order 85 has been issued shall not be the basis for the CONSTRUCTION MANAGER to request additional costs and/or time. OWNER shall compensate the CONSTRUCTION MANAGER separately for its payroll costs, general condition costs, and fee associated with negotiating and managing the work which is the subject of this Change Order. Time, costs, and damages associated with the work and the procurement of the work contemplated by this Change Order will be addressed in Change Authorizations associated with this Change Order and not by this Change Order.

TO BE ATTACHED TO AND FORM A PART OF DOCUMENT 01028-CO  
CHANGE ORDER TO ORIGINAL CONTRACT

**ADDITIONAL SURETY SIGNATURES**

**Travelers Casualty and Surety Company of America**

*Ana W. Oliveras*

Ana W. Oliveras, Attorney-in-Fact

FEB - 1 2006

**Fidelity and Deposit Company of Maryland**

*Ana W. Oliveras*

Ana W. Oliveras, Attorney-in-Fact

FEB - 1 2006

**FLORIDA DEPARTMENT OF INSURANCE**

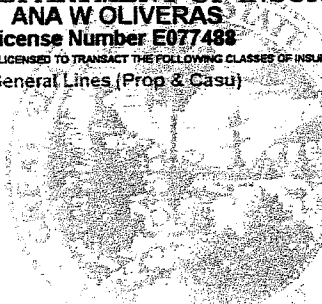
**ANA W OLIVERAS**

**License Number E077488**

**IS LICENSED TO TRANSACT THE FOLLOWING CLASSES OF INSURANCE**  
**General Lines (Prop & Casu)**



**RESIDENT  
LICENSE**



This Licensee must have an active appointment with the insurer or employer for which products are marketed. See reverse for additional requirements.  
The Florida Community College System is Experian's subcontractor for providing test reprints for  
the use of the Florida Department of Insurance.

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, Pa., a Pennsylvania corporation, does each hereby appoint

---Ileana Perez, Juli Russell, Mercedes M. Pamparatto, Ana W. Oliveras, Socorro Rios: of Fort Lauderdale, Florida---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby. Without limitation on any and all surety bonds and any and all consents required by the State Department of Transportation of the state of Florida, incident to the release of retained percentages and/or final estimates on engineering and/or construction contracts:

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. have each executed these presents



this 3rd day of April, 2003.

*Michael C. Fay*  
Michael C. Fay, Vice President

STATE OF NEW YORK }  
COUNTY OF NEW YORK }ss.

On this 3rd day of April, 2003 before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa., to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

*Dorothy L. Parker*  
DOROTHY L. PARKER  
Notary Public, State of New York  
No. 0174006831  
Qualified in Richmond County  
Commission Expires June 25 03

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, Pa. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation

this FEB - 1 2006 day of



*Elizabeth M. Tuck*  
Elizabeth M. Tuck, Secretary

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
TRAVELERS CASUALTY AND SURETY COMPANY  
FARMINGTON CASUALTY COMPANY  
Hartford, Connecticut 06183-9062

**POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT**

KNOW ALL PERSONS BY THESE PRESENTS, THAT TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, corporations duly organized under the laws of the State of Connecticut, and having their principal offices in the City of Hartford, County of Hartford, State of Connecticut, (hereinafter the "Companies") hath made, constituted and appointed, and do by these presents make, constitute and appoint: **Michael F. Yadach, Juli A. Russell, Nancy H. Zaleski, Ana W. Oliveras, of Sunrise, Florida**, their true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, the following instrument(s): by his/her sole signature and act, any and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto and to bind the Companies, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Companies, and all the acts of said Attorney(s)-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following Standing Resolutions of said Companies, which Resolutions are now in full force and effect:

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her.

VOTED: That the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary.

VOTED: That any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary, or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority.

**This Power of Attorney and Certificate of Authority is signed and sealed by facsimile (mechanical or printed) under and by authority of the following Standing Resolution voted by the Boards of Directors of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, which Resolution is now in full force and effect:**

VOTED: That the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY have caused this instrument to be signed by their Senior Vice President and their corporate seals to be hereto affixed this 6th day of August, 2004.

STATE OF CONNECTICUT

JSS. Hartford

COUNTY OF HARTFORD

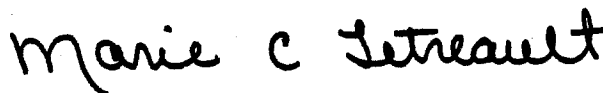


TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA  
TRAVELERS CASUALTY AND SURETY COMPANY  
FARMINGTON CASUALTY COMPANY

By   
George W. Thompson  
Senior Vice President

On this 6th day of August, 2004 before me personally came GEORGE W. THOMPSON to me known, who, being by me duly sworn, did depose and say: that he/she is Senior Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, the corporations described in and which executed the above instrument; that he/she knows the seals of said corporations; that the seals affixed to the said instrument are such corporate seals; and that he/she executed the said instrument on behalf of the corporations by authority of his/her office under the Standing Resolutions thereof.





My commission expires June 30, 2006 Notary Public  
Marie C. Tetreault


#### CERTIFICATE

I, the undersigned, Senior Vice President of TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, TRAVELERS CASUALTY AND SURETY COMPANY and FARMINGTON CASUALTY COMPANY, stock corporations of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that the Standing Resolutions of the Boards of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this \_\_\_\_\_ day of \_\_\_\_\_

FEB - 1 2006 , 20



By   
Peter Schwartz  
Senior Vice President



**Power of Attorney**  
**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by PAUL C. ROGERS, Vice President, and T. E. SMITH, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Juli A. RUSSELL, Frances SIGURANI, Nancy H. ZALESKI and Ana W. OLIVERAS, all of Sunrise, Florida, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings and the execution of such bonds or undertakings** in pursuance of these presents, shall be as binding upon said Company, as fully and amply to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Juli A. Russell, Frances Sigurani, Ileana Perez, Nancy H. Zaleski, dated October 11, 2000.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 27th day of October, A.D. 2003.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*T. E. Smith*

*T. E. Smith*

*Assistant Secretary*

*Paul C. Rogers*

By:

*Paul C. Rogers*

*Vice President*

State of Maryland }  
City of Baltimore } ss:

On this 27th day of October, A.D. 2003, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came PAUL C. ROGERS, Vice President, and T. E. SMITH, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Dennis R. Hayden*

*Dennis R. Hayden*

*Notary Public*

My Commission Expires: February 1, 2005

## EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

### CERTIFICATE


I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this \_\_\_\_\_ day of FEB - 1 2006, \_\_\_\_\_.

  
Assistant Secretary